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CHARLES ELIOTT LOVETT

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1944.

—  
No. 425  
—

LUCIUS POWERS and W. E. URICK, *Petitioners*,

v.

CHESTER BOWLES, Price Administrator.

—  
**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES EMERGENCY COURT OF AP-  
PEALS AND BRIEF IN SUPPORT THEREOF**

—  
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September 2, 1944.

—  
PRESS OF JUDD & DETWEILER, INC., WASHINGTON, D. C.



## TABLE OF CONTENTS

<i>Petition:</i>	<i>Page</i>
A. STATEMENT OF MATTER INVOLVED.....	1
B. JURISDICTION .....	4
C. QUESTIONS PRESENTED .....	5
D. REASONS FOR THE ALLOWANCE OF THE WRIT .....	5
 <i>Brief:</i>	
I. OPINION BELOW .....	9
II. JURISDICTION .....	9
III. STATEMENT OF THE CASE.....	10
IV. SPECIFICATION OF ERRORS.....	10
V. QUESTIONS PRESENTED .....	11
VI. STATUTORY PROVISIONS INVOLVED.....	12
VII. SUMMARY OF ARGUMENT.....	13
 VIII. ARGUMENT:	
<i>Point 1.</i> The fundamental question as to the validity of the regulation involved may be determined by the respondent's fulfillment of the statutory requirements—not by any monetary standard .....	15
<i>Point 2.</i> Respondent was without authority to establish maximum prices for California table grapes .....	17
<i>Point 3.</i> Even if the respondent had the authority to establish maximum prices for California table grapes he had no authority to establish a single price based on an average 1942 season price for all varieties.....	20
<i>Point 4.</i> The establishment of a single maximum price for California table grapes based upon a season average for 1942 for all varieties is violative of the statutory prohibition against the elimination or restriction of brand names and the standardization of the commodity .....	24

<i>Point 5.</i> The establishment of a single maximum price for California table grapes violates the statute by compelling changes in the business practices established in the industry.....	28
<i>Point 6.</i> The procedure followed by the Administrator in issuing the regulation involved and in acting upon the protest filed against it constituted a violation of the constitutional guarantee of due process .....	30
<b>IX. CONCLUSION .....</b>	36
<b>CITATIONS</b>	
<i>Administrative:</i>	
Maximum Price Regulation No. 426.....	3, 18*
Amendment No. 4.....	3
Amendment No. 46.....	34*
Amendment No. 50.....	34*
<i>Constitutional:</i>	
Fifth Amendment to the Constitution.....	5, 11, 15, 30
<i>Judicial:</i>	
<i>International Railway Co. v. Davidson</i> , 257 U. S. 506....	16
<i>Ohio Bell Telephone Co. v. Public Utilities Commission</i> , 301 U. S. 292 .....	19, 34*
<i>Safeway Stores v. Brown</i> , 138 F. (2d) 278.....	33*
<i>U. S. v. United Verde Copper Co.</i> , 196 U. S. 207.....	16
<i>Waite v. Macy</i> , 246 U. S. 606.....	16
<i>Yakus v. United States</i> , 321 U. S. 414.....	17, 26, 30, 35
<i>Statutory:</i>	
Act of July 16, 1943, 57 Stat. 566.....	13*
Act of June 30, 1944 (Stabilization Extension Act of 1944) .....	13*, 29, 32*, 33*
Emergency Price Control Act (56 Stat. 23), as amended:	
Section 2 .....	1
Section 2(a) .....	17
Section 2(h) .....	12, 28, 30
Section 2(j) .....	23, 24, 30
Section 3 .....	5, 28*
Section 203(a) .....	4, 16*, 32
Section 203(d) .....	33*
Section 204(a) .....	4, 16*
Section 204(d) .....	4, 9
Stabilization Act (56 Stat. 765):	
Section 3 .....	5, 6, 12, 17, 18*, 22*

\* Refers to footnotes.

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Petition for a Writ of Certiorari to the United States  
Emergency Court of Appeals and Brief in  
Support Thereof

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**PETITION**

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*To the Honorable the Chief Justice of the United States and  
the Associate Justices of the Supreme Court of the United  
States:*

The petition of Lucius Powers and W. E. Urick respectfully submits to this Honorable Court the following:

**A**

**STATEMENT OF MATTER INVOLVED**

This case is based upon a protest filed by petitioners questioning the validity of a regulation issued by the respondent establishing maximum prices for California table grapes in purported pursuance of Section 2 of the Emergency Price Control Act of 1942, 56 Stat. 23, 50 U. S. C. Appx. § 901.

Petitioners are residents of, and their vineyards and distributing points are in, the San Joaquin Valley of California. This producing area covers more than 25,000 square miles. (Record, pages 2-3.)

There are eight major varieties of table grapes regularly shipped from the San Joaquin Valley area. These include Thompsons and Muscats (which were not shipped in 1943 because of restrictions of the War Food Administration), Red Malagas, White Malagas, Ribiers, Tokays, and Emperors. (Rec. p. 3.) There were also relatively heavy shipments of the Almeria and Cornichon varieties. (R. 22.) The industry practice is that these varieties, and other miscellaneous varieties of table grapes, are shipped as "United States Fancy", "United States No. 1", "United States No. 2", and "Unclassified". Many growers have, by special and expensive methods of cultivation, developed highly specialized grades of table grapes which they ship under brand names at premium prices. (R. 3-4.) The harvest extends from late June to early December. (R. 58.)

Petitioner Powers is a grower of several varieties of table grapes including "Emperors" and "Malagas". Under ordinary circumstances Emperors are one of the higher-priced table grapes, while Malagas are a medium-priced variety. Emperors are produced at the rate of three to four tons per acre whereas the same acreage and conditions will produce five to six tons of Malagas. Furthermore, the Emperor season is longer; it costs approximately 25% more to produce them; and there is a higher percentage of weather damage and crop failures. It therefore follows that there must be, and normally are, price differences between the two varieties. (R. 3-4.)

Petitioner Urick is a grower of table grapes the choicest of which he packs and ships under the trade or brand name "Poinsettia"—a name which he has spent large sums of money in popularizing and promoting. Grapes thus sold

command a price far in excess of the average, and they cannot be sold at the over-all average table grape price (now established as the maximum) without severe loss. On the other hand, if petitioner Urick should temporarily discontinue the use of his brand name, or sell a poor quality of grapes thereunder, he would destroy the value of the name. (R. 2, 5.)

The regulation in question is Amendment No. 4<sup>1</sup> to Maximum Price Regulation No. 426.<sup>2</sup> The amendment, which brought table grapes within the coverage of the primary regulation, was issued August 19, 1943, to be effective August 21, 1943, and established maximum prices for interstate carlot or trucklot sales of California table grapes to all persons other than ultimate consumers. This was done by fixing dollars-and-cents maximum prices f. o. b. shipping point for shipments out of California. (R. 19.) Variations in prices were provided according to the container size and the season, but not according to different grades, varieties, and established brand names. (R. 3-4, 20.) In other words, as aptly stated by the respondent in his answer to the complaint herein, the amendment "established a single price for all California table grapes, without differentiation for varieties, grades or brands, but subject to certain seasonal differentials set forth in said Regulation." (R. 53-54.)

On the effective date (August 21, 1943) of the price regulation the shipping of California table grapes was already in progress<sup>3</sup> and the petitioners had made various commitments concerning the time and terms of sale and delivery of grapes, and arrangements for the purchase of materials

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<sup>1</sup> 8 F. R. 11,589.

<sup>2</sup> 8 F. R. 9,546.

<sup>3</sup> Prior to the effective date of the regulation, there were 1,475 carlot shipments of California table grapes. (R. 3.) This constituted approximately 8.7% of the total shipments for the entire season. (R. 44.)

and other facilities for the transportation, packing and shipment thereof. (R. 3.)

Pursuant to Section 203(a) of the Emergency Price Control Act, 50 U. S. C. Appx. § 923(a), 56 Stat. 31, petitioners filed a verified joint protest against the said regulation on September 27, 1943. (R. 1-9.) They also requested an oral hearing, but this was denied by an order of the respondent dated October 29, 1943, whereby an opportunity was afforded petitioners to present further evidence in writing. (R. 10-11.) This was done by affidavit filed November 12, 1943. (R. 12-17.)

The respondent took no action upon the protest until February 2, 1944, when he entered an order denying it. (R. 18.) The opinion accompanying the order of denial was little more than a summary, or compilation of conclusions, based upon "evidence" previously and privately considered by the respondent, most of which was contrary to the sworn statements of petitioners and which they had had no opportunity to refute. (R. 19-29.)

On March 3, 1944, pursuant to Section 204(a) of the Emergency Price Control Act, 50 U. S. C. Appx. § 924(a), 56 Stat. 31, petitioners filed a complaint in the United States Emergency Court of Appeals. (R. 47-51.) That Court entered a judgment of dismissal on August 4, 1944. (R. 70.)

## B

### **JURISDICTION**

The jurisdiction of this Court is invoked under Section 204(d) of the Emergency Price Control Act, 50 U. S. C. Appx. § 924(d), 56 Stat. 31. The complaint herein was dismissed by the Emergency Court on August 4, 1944. (R. 70.)

## C

**QUESTIONS PRESENTED**

The primary questions presented are (1) whether the Price Administrator may establish an *average* price for California table grapes, without regard for varieties or brands, contrary to the statutory requirements (a) that any price established must reflect "*the highest*" price received by producers of the commodity from January 1 to September 15, 1942, seasonally adjusted, (b) that there may be no elimination or restriction of the use of brand names, and (c) that there may be no standardization of any commodity except under special circumstances not here present; (2) whether the Price Administrator may establish any maximum prices for table grapes in the absence of the determination and publication of certain data by the Secretary of Agriculture, as required by the statute as conditions precedent; and (3) whether the establishment (detrimental to petitioners) of a maximum price for California table grapes after sales and other related commitments have been made and shipments have actually begun, followed by unreasonably delayed action upon a protest filed against such price, constitutes a violation of the due process clause of the Fifth Amendment to the Constitution of the United States.

## D

**REASONS FOR THE ALLOWANCE OF THE WRIT**

1. *The Emergency Court of Appeals has decided a substantial question of federal law of general importance which has not been, but should be, settled by this Court.* Section 3 of the Emergency Price Control Act of 1942, as amended by Section 3 of the Stabilization Act, provides

that no maximum price shall be established for any agricultural commodity which does not reflect to producers thereof "*the higher*" of certain price standards "as determined and published by the Secretary of Agriculture, namely: (1) the *parity price*, or (2) the *highest price received by producers from January 1 to September 15, 1942*—each adjusted for grade, location, and seasonal differentials. Although the Secretary of Agriculture did not make such a determination and publication as to California table grapes, as required by the statute as conditions precedent to the establishment of maximum prices, the respondent proceeded to take an *average 1942 season price for all varieties*. The respondent thus erroneously assumed authority to regulate the prices of California table grapes and, having assumed it, construed the statute as permitting him to take an average price without regard for grades and varieties or for the highest price received by producers from January 1 to September 15, 1942. (The parties conceded that the parity price need not be considered for comparative purposes.) This construction of the Act was approved by the Emergency Court and, unless reversed by this Court, will constitute a precedent for the establishment of maximum prices for *all* agricultural commodities absolutely at variance with the will of Congress and to the detriment of all producers of the higher-grade products.

2. *The Emergency Court has sanctioned proceedings by the respondent which deprived petitioners of due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States and as protected by this Court.* The respondent did not establish maximum prices for California table grapes until after the shipping season had started and the growers and shippers, including petitioners, had made their necessary commitments. Petitioners promptly filed a protest and requested oral hearing. Hear-

ing was denied and, after the shipping season had ended, the protest was also denied. The denial was based upon the respondent's own conclusions, and upon "evidence" previously and privately considered by the respondent, most of which was contrary to sworn statements presented by petitioners, and which they had had no opportunity to refute. Such "due process" prejudiced the petitioners both as to its time and method, and the approval thereof by the Emergency Court offends against that due process guaranteed by the Constitution.

WHEREFORE, petitioners pray that a writ of certiorari be issued to review the judgment of the United States Emergency Court of Appeals in the above entitled cause, and that said judgment be reversed, and that petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and proper.

Respectfully submitted,

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September 2, 1944.